

## SENATE BILL No. 274

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-20.

**Synopsis:** Clean manufacturing tax credits. Establishes the clean manufacturing income tax credit board. Provides that a taxpayer is entitled to a credit against the taxpayer's state income tax liability if the taxpayer is awarded a credit by the board for a qualified material substitution expense or a qualified clean manufacturing investment. Provides that the amount of credits allowed may not exceed \$10,000,000 in a state fiscal year or \$200,000 in a taxable year for a single taxpayer.

**Effective:** January 1, 2002.

**Gard**

January 11, 2001, read first time and referred to Committee on Finance.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## SENATE BILL No. 274

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-3.1-20 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2002]:

4       **Chapter 20. Clean Manufacturing Income Tax Credit**

5       **Sec. 1. As used in this chapter, "board" refers to the clean**  
6 **manufacturing income tax credit board established by section 13**  
7 **of this chapter.**

8       **Sec. 2. As used in this chapter, "clean manufacturing" has the**  
9 **meaning set forth in IC 13-11-2-27.6**

10       **Sec. 3. As used in this chapter, "clean manufacturing**  
11 **investment" means an expenditure for any of the following:**

12           **(1) Production process redesign (as defined in**  
13 **IC 13-27.5-3-2(2)(C)).**

14           **(2) Operational improvement (as defined in**  
15 **IC 13-27.5-3-2(2)(D)).**

16       **Sec. 4. As used in this chapter, "environmental waste" has the**  
17 **meaning set forth in IC 13-11-2-72.**



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1       Sec. 5. As used in this chapter, "institute" refers to the Indiana  
2 clean manufacturing technology and safe materials institute  
3 established under IC 13-27.5-2.

4       Sec. 6. As used in this chapter, "manufacturing facility" means  
5 a facility of a manufacturer (as defined in IC 13-11-2-126(b)).

6       Sec. 7. As used in this chapter, "material substitution" means:  
7       (1) an input change (as defined in IC 13-27.5-3-2(2)(A)); or  
8       (2) a product reformulation (as defined in  
9       IC 13-27.5-3-2(2)(B)).

10       Sec. 8. As used in this chapter, "pass through entity" means:  
11       (1) a corporation that is exempt from the adjusted gross  
12       income tax under IC 6-3-2-2.8(2);  
13       (2) a partnership;  
14       (3) a limited liability company; or  
15       (4) a limited liability partnership.

16       Sec. 9. As used in this chapter, "SIC Manual" has the meaning  
17 set forth in IC 6-3.1-10-2.5.

18       Sec. 10. As used in this chapter, "state tax liability" means the  
19 taxpayer's total tax liability that is incurred under:

- 20       (1) IC 6-2.1 (the gross income tax);  
21       (2) IC 6-3-1-1 through IC 6-3-7 (the adjusted gross income  
22       tax); and  
23       (3) IC 6-3-8 (the supplemental net income tax);

24 as computed after the application of the credits that under  
25 IC 6-3.1-1-2 are to be applied before the credit provided by this  
26 chapter.

27       Sec. 11. As used in this chapter, "taxpayer" means any  
28 individual, corporation, limited liability company, partnership, or  
29 other entity that:

- 30       (1) has any state tax liability; and  
31       (2) operates at least one (1) manufacturing facility in Indiana  
32       under standard industrial classification codes 20 through 39  
33       in the SIC manual.

34       Sec. 12. (a) As used in this chapter, "toxic material" has the  
35 meaning set forth in IC 13-11-2-233.

36       (b) For purposes of this chapter, the list of toxic materials may  
37 be periodically updated by the institute in consultation with the  
38 commissioner of the department of environmental management  
39 based on information provided by:

- 40       (1) the United States Environmental Protection Agency;  
41       (2) a professional industrial hygiene association; or  
42       (3) the United States Occupational Safety and Health

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**Administration.**

**Sec. 13. (a)** The clean manufacturing income tax credit board is established. The board consists of the following six (6) members:

- (1) The director of the institute or the director's designee.
- (2) The commissioner of the department of environmental management or the commissioner's designee.
- (3) The director of the department of commerce or the director's designee.
- (4) The director of the budget agency or the director's designee.
- (5) The commissioner of the department of state revenue or the commissioner's designee.
- (6) The chairperson of the clean manufacturing technology board or the chairperson's designee.

(b) The director of the department of commerce or the director's designee shall serve as chairperson of the board. Four (4) members of the board constitute a quorum to transact and vote on the business of the board. The board may take official action upon the affirmative vote of a majority of the members present and voting.

(c) The institute shall assist the board in carrying out the board's duties under this chapter.

(d) Each member of the board is entitled to reimbursement for traveling expenses as provided in IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

**Sec. 14.** The board may make credit awards under this chapter to foster clean manufacturing at manufacturing facilities in Indiana.

**Sec. 15. (a)** Subject to the conditions set forth in this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax liability in a taxable year if the taxpayer is awarded a credit by the board under this chapter for the taxable year in which the institute verifies either or both of the following:

- (1) A qualified material substitution expense.
- (2) A qualified clean manufacturing investment.

(b) Subject to sections 20(5) and 21(8) of this chapter, a credit awarded to a taxpayer under subsection (a) is limited to one (1) qualified material substitution expense and one (1) qualified clean manufacturing investment for each taxable year.



(c) The taxpayer must certify that a material substitution or a clean manufacturing investment for which a credit is awarded to a taxpayer under subsection (a):

(1) is initiated voluntarily by the taxpayer; and

(2) is not the result of an enforcement action, a negotiated settlement, or an order of a federal or state agency or court.

Sec. 16. (a) The maximum amount of the material substitution expense credit to which a taxpayer is entitled in a taxable year is equal to:

(1) the certified additional cost of purchasing a qualified material that is substituted for a toxic material; multiplied by

(2) thirty percent (30%).

(b) The maximum amount of the clean manufacturing investment credit to which a taxpayer is entitled in a taxable year is equal to the amount determined under STEP THREE of the following formula:

STEP ONE: Determine the certified cost of the qualified clean manufacturing investment.

STEP TWO: Multiply the STEP ONE amount by thirty percent (30%).

STEP THREE: Multiply the STEP TWO result by one (1) of the following, as specified by the taxpayer:

(A) The certified percentage by which a toxic material is reduced by means of the clean manufacturing investment.

(B) The certified percentage by which the generation of an environmental waste is reduced by means of the clean manufacturing investment.

The taxpayer is eligible for the credit in the taxable year in which the production process redesign or operational improvement that forms the basis of the clean manufacturing investment first produces verifiable reductions in the use of toxic materials or the generation of environmental waste.

Sec. 17. (a) Except as provided in subsection (b), a taxpayer is not entitled to carry forward, carry back, or a refund of an unused credit.

(b) If the amount of a clean manufacturing investment credit or a material substitution expense credit for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to not more than two (2) taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for a subsequent



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taxable year.

**Sec. 18.** If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

**Sec. 19.** To be entitled to a credit under this chapter, a taxpayer must do the following:

- (1) Make an expenditure for a qualifying activity.
- (2) Request that the board certify:
  - (A) the eligibility of the taxpayer for the credit;
  - (B) a description of the activity or expense that is eligible for the credit;
  - (C) the amount of the expenditure that is eligible for the credit; and
  - (D) for a clean manufacturing investment credit, the percentage of:
    - (i) environmental waste; or
    - (ii) a toxic material;
- reduced by means of the clean manufacturing investment; on forms and in the manner provided by this chapter.
- (3) Claim the credit under section 22 of this chapter.
- (4) Be allotted a share of the maximum statewide credit under section 24 of this chapter.
- (5) Pay the institute an administrative fee established by the institute.

**Sec. 20.** The board shall certify that a taxpayer's expenditure is a qualified material substitution expense if the board determines that:

- (1) before making the material substitution, the taxpayer obtains a verification from the institute that:
  - (A) the material substitution is nontoxic or less toxic than the toxic material;
  - (B) the expenditure will reduce the use of the toxic material based on a measurement of the toxicity and amount of the toxic material reduced per unit of production under IC 13-27.5-2-5(c)(4) and IC 13-27.5-2-7 and in conformity with the guidelines established by the institute; and
  - (C) estimates the additional cost the taxpayer will incur to

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- 1 use a substitute material for the toxic material;
- 2 (2) the taxpayer makes expenditures for the material
- 3 substitution;
- 4 (3) the expenditures directly result from the additional costs
- 5 of substituting a material for a toxic material in a specific
- 6 production process at a manufacturing facility;
- 7 (4) the taxpayer applies to the board for the credit
- 8 certification on a form prescribed by the board in
- 9 consultation with the institute;
- 10 (5) the taxpayer has not received a certification under this
- 11 section for the same material substitution project;
- 12 (6) the taxpayer pays the institute the administrative fee
- 13 specified under section 19 of this chapter; and
- 14 (7) the taxpayer provides all information that the board, in
- 15 consultation with the institute, determines is necessary for:
- 16 (A) the calculation of the qualified material substitution
- 17 expense credit provided by this chapter; and
- 18 (B) the determination of whether an expenditure is a
- 19 qualified material substitution expense.

20 **Sec. 21.** The board shall certify that a taxpayer's expenditure is

21 a qualified clean manufacturing investment if the board determines

22 that:

- 23 (1) before the taxpayer implements a production process
- 24 redesign or an operational improvement, the taxpayer obtains
- 25 a verification from the institute that:
- 26 (A) the expenditure will reduce the use of a toxic material
- 27 or reduce an environmental waste;
- 28 (B) estimates the percentage of reduction in the use of a
- 29 toxic material or generation of environmental waste by
- 30 means of clean manufacturing that will result; and
- 31 (C) estimates the cost the taxpayer will incur to implement
- 32 production process redesign or operational improvement
- 33 that will reduce:
- 34 (i) the use of a toxic material; or
- 35 (ii) the generation of an environmental waste.
- 36 based on a measurement of the toxicity and amount of toxic
- 37 material or environmental waste reduced per unit of
- 38 production under IC 13-27.5-2-5(c)(4) and IC 13-27.5-2-7 and
- 39 in conformity with the guidelines set by the institute;
- 40 (2) the taxpayer makes expenditures for the clean
- 41 manufacturing investment;
- 42 (3) the expenditures directly result from the production



process redesign or operational improvement that:

(A) are directly used in a specific production process at a manufacturing facility; and

(B) reduce by means of a clean manufacturing investment:

(i) the use of a toxic material; or

(ii) the generation of an environmental waste;

as determined under the guidelines developed by the institute, which shall be based on a measurement of the toxicity and amount of toxic material or environmental waste reduced per unit of production under IC 13-27.5-2-5(c)(4) and IC 13-27.5-2-7;

(4) the taxpayer applies to the board for the credit certification on a form prescribed by the board in consultation with the institute after equipment related to the production process redesign or operational improvement at a manufacturing facility has become operational;

(5) the institute verifies the qualified percentage by which the use of a toxic material or by which the generation of an environmental waste has been reduced at an industrial facility by means of a clean manufacturing investment;

(6) the taxpayer pays the institute the administrative fee specified under section 19 of this chapter;

(7) the taxpayer provides all information that the board, in consultation with the institute, determines is necessary for:

(A) the calculation of the clean manufacturing investment credit expense provided by this chapter; and

(B) the determination of whether an expenditure is a qualified clean manufacturing investment; and

(8) the taxpayer has not received a certification under this section for the same clean manufacturing investment.

**Sec. 22.** A taxpayer claiming a credit under this chapter shall submit to the department of state revenue a copy of the certification of credit by the board under this chapter for the taxable year. However, failure to submit a copy of the certification does not invalidate a claim for credit.

**Sec. 23.** The board may audit any of the information required under this chapter to claim a credit.

**Sec. 24. (a)** The amount of tax credits allowed under this chapter may not exceed:

(1) ten million dollars (\$10,000,000) in a state fiscal year; or

(2) two hundred thousand dollars (\$200,000) in a taxable year for a single taxpayer.

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(b) The board shall record the time of filing of each application for allowance of a credit under this chapter and shall approve the applications, if the applications otherwise qualify for a tax credit under this chapter, in the chronological order in which the applications are filed in the state fiscal year.

(c) When the total credits approved under this section equal the maximum amount allowable in a state fiscal year, an application thereafter filed for that same fiscal year may not be approved. However, if an application is received by the board after the maximum allowable credits have been awarded for the state fiscal year, the board may review the application for credit in a subsequent state fiscal year up to the total maximum amount of the credit allowable. The review of applications for credit in a subsequent state fiscal year shall be made in the order in which the applications are received by the institute.

SECTION 2. [EFFECTIVE JANUARY 1, 2002] (a) The legislative council shall assign the clean manufacturing tax credit established under IC 6-3.1-20, as added by this act, for audit and evaluation under IC 2-5-21 during 2005.

(b) This SECTION expires July 1, 2006.

SECTION 3. [EFFECTIVE JANUARY 1, 2002] (a) The clean manufacturing income tax credit board established by IC 6-3.1-20-13, as added by this act, may not take action under IC 6-3.1-20, as added by this act, before July 1, 2002.

(b) A taxpayer is entitled to a tax credit under IC 6-3.1-20, as added by this act, for either:

(1) a qualified material substitution expense; or

(2) a qualified clean manufacturing investment;

or both, only to the extent that the qualified material substitution expense is incurred after June 30, 2002, or the qualified clean manufacturing investment is made after June 30, 2002.

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